Supreme Court, U.S.
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No. 01-1402

IN THE

Supreme Court of the United States

GARY R. WALL, WILLIAM COOKSEY, SR., and STEPHEN MANOS,

Petitioners,

v.

HON. CHESTER J. STRAUB CIRCUIT JUDGE, HON. RALPH K. WINTER CIRCUIT JUDGE, HON. THOMAS J. MESKILL CIRCUIT JUDGE, HON. JANET C. HALL DISTRICT JUDGE, ROBERT D. LUSKIN, VERE O. HAYNES, LABORERS' INTERNATIONAL UNION, LABORERS' LOCAL 230,

Respondents.

ON PETITION FOR AN EXTRAORDINARY WRIT TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENTS VERE O. HAYNES, LABORERS' INTERNATIONAL UNION, AND LABORERS' LOCAL 230

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REASONS TO DENY THE WRIT OF MANDAMUS

The undersigned offers this Opposition to Pro Se Petitioners' Writ of Mandamus on behalf of three of the eight captioned Respondents: Laborers Local 230, Laborers' International Union of North America ("LIUNA"), and Vere O. Haynes.[1] These three Respondents are also captioned among the ten Respondents listed in the Pro Se Petitioners' accompanied Petition for Writ of Certiorari (Docket No. 01-1401) filed and docketed on the same day as the instant Petition for Writ of Mandamus. For the reasons identified below, the instant Petition for Writ of Mandamus should be denied.

There are two simple reasons why Respondents Haynes, LIUNA and Local 230 are not properly named to Petitioners' Writ of Mandamus. First, a petition seeking a writ of mandamus is required to "state the name and office or function of every person against whom relief is sought." S.C. Rule 20.3 (a). In this regard, the relief sought by Pro Se Petitioners in their Mandamus Writ is as follows: *"To direct the District Court to docket the Amended Civil Rights Act Complaint, and to identify the Memorandum In Support as such, and rule on said Amended Complaint and Memorandum In Support."* Pet at 23. The aforementioned three named Respondents, having no judicial function or authority, are obviously powerless to effect this requested relief. Therefore, they are not properly named Respondents to Pro Se Petitioners' Petition for Writ of Mandamus.

Second, the requested relief sought by the Pro Se Petitioners is improper, at least as to Respondents Haynes,

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1. The remaining Respondents are separately represented.

LIUNA and Local 230 because, in addition to Petitioners' improper designation of Mr. Haynes, Local 230 and LIUNA as Respondents, these three are also improperly designated as defendants in the underlying Complaint that is the subject of the Petition.

Petitioners' Mandamus Petition arises out of a Pro Se action, the dismissal of which was reasonably and fairly treated both by the District Court's 40-page opinion and the Second Circuit's Summary Order. The subject "*Amended Complaint*"[2] (also styled by Pro se Petitioners as the "*Amended Civil Rights Act Complaint*" Pet 17-18), is actually the "Third Amended Complaint" in Pro Se Plaintiffs' failed Civil RICO action, the topic of the aforementioned Petition for Writ of Certiorari (Docket No. 01-1401).

Respondents Haynes, Local 230 and LIUNA are not proper defendants in the subject "*Amended Complaint.*" That "*Complaint*" stems from the RICO action first endeavored by Pro Se Plaintiff Gary Wall on December 1, 1997. The District Court dismissed this initial action because Pro Se Wall "failed to meet the pleading requirements under RICO." Pro Se Wall, then joined by Pro Se Cooksey and Manos, filed their Amended Civil RICO Complaint on October 7, 1998.[3] By Ruling dated July 29, 1999, the District

2. Reference is made to the subject "Amended Complaint" to clarify the Complaint that is the subject of the Mandamus Petition.

3. For a more detailed explanation of the permutations of Petitioners' multi versioned Complaint, see the Respondents' Brief in Opposition filed in Docket No. 01-1401 under the heading "Nature of the Case." Therein is fully explained the disposition of Petitioners' Complaint through their "Second Amended Complaint." That (Cont'd)

Court granted the Defendants' Motion to Dismiss the Amended Complaint because Plaintiffs failed to allege facts that could allow a reasonable finder of fact to find that any of the Defendants named in the Complaint had engaged in a "*pattern of racketeering activity*" or "*to support a conclusion that any actions by the Defendants induced any of the Plaintiffs to part consensually with any of their property, including their right to democratic participation in their union's affairs.*" Moreover, the District Court noted that much of the allegations were time barred under the applicable four-year statute of limitations. In addition, the allegations that did fall within the statute of limitations period did not constitute "*predicate acts*" or represent "*related acts*" that "*amount to, or pose a threat of continuing criminal activity.*" However, in deference to the Pro Se Plaintiffs, the District Court allowed them "one *final* opportunity to replead their claims." The District Court instructed the Pro Se Plaintiffs that in such repleading the defects in their Amended Complaint specifically identified in the District Court's Ruling dated July 29, 1999 must be remedied.

Plaintiffs' Second Amended Complaint filed on August 30, 1999 consisted of two claims, a civil RICO claim and a Constitutional due process claim. Count One, the civil RICO claim, was brought against all of the Defendants named in that third version Complaint, including Defendants Vere O. Haynes, Laborers' Local 230 and Laborers' International Union of North America, the improperly named Respondents

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(Cont'd)
description focuses on the civil RICO claim of the Second Amended Complaint (Count One). Claim Two of the Second Amended Complaint was brought solely against Respondent Luskin pursuant to an alleged "Fourteenth Amendment" violation.

in the instant Mandamus Writ. Claim Two of Pro Se Plaintiffs' Second Amended Complaint reads as follows:

> The plaintiffs allege that Defendant Luskin through the authority entrusted in him by the Department of Justice through the Operational Agreement with the Department of Justice an agency of the United States, has violated the procedural due process clause of the fourteenth amendment of the United States Constitution violating the constitutional right of the plaintiffs in the District and Commonwealth of Connecticut.

Accordingly, Claim Two of Plaintiffs' Second Amended Complaint was brought ***solely*** against Robert Luskin and not against Defendants Vere O. Haynes, Laborers' Local 230 and Laborers' International Union of North America. The District Court, by Ruling dated July 11, 2000, granted Defendants' Motion to Dismiss Plaintiffs' Second Amended Complaint ***with prejudice*** and granted leave for Plaintiffs to replead the Constitutional due process claim (Second Count of the Complaint) against "***Defendant Luskin only***." In this regard, the second claim of the Second Amended Complaint was repleaded by the Pro Se Plaintiffs on August 11, 2000 and was entitled "*Amended Complaint Form Claim II Civil Rights*." This Complaint referenced in Petitioners' Petition for a Writ of Mandamus as the "*Amended Complaint*" or the "*Amended Civil Rights Act Complaint*" (Pet 17-18) is actually the Third Amended Complaint in the dismissed RICO action, Civil Action No. 3:97-CV-02502 (JCH). Pro Se Plaintiffs' Third Amended Complaint replaced their claim of a Fourteenth Amendment Constitutional violation with a claimed Fifth Amendment violation.

However, and significant to Petitioners' problematic Mandamus, Pro Se Plaintiffs did not bring their Third Amended Complaint[4] against Robert Luskin alone as proscribed by the District Court. Rather, even though the second claim of the Second Amended Complaint was against Luskin alone, and even though the District Court dismissed the Second Amended Complaint against all defendants but gave leave to the Plaintiffs to replead the second claim of the Second Amended Complaint against *Luskin only*, Pro Se Plaintiffs' Third Amended Complaint adds as defendants, without leave from the Court to do so, Vere O. Haynes, Laborers' Local 230 and Laborers' International Union of North America. Thus, Defendants Haynes, Local 230 and LIUNA are not and cannot be treated as defendants in Pro Se Plaintiffs "*Amended Civil Rights Act Complaint.*" Pet 17-18. Accordingly, Haynes, Local 230 and LIUNA are not properly defendants in the underlying subject Amended Complaint and are not properly Respondents in Pro Se Petitioners' Writ of Mandamus.

Finally, Pro Se Plaintiffs did not, in their Notice of Appeal to the Second Circuit Court from the dismissal of their Second Amended Complaint, claim as error the District Court's decision to restrict the leave to amend the second count of the Second Amended Complaint to Luskin only. Rather, their Notice of Appeal restricted the appellate question to the District Court's construction and application of RICO to their dismissed Complaint. Pro Se Plaintiffs never requested leave from the Court to add Vere O. Haynes, Laborers' Local 230 and Laborers' International Union of North America ("LIUNA") as defendants in that action.

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4. i.e., the repleading of Count 2 of their Second Amended Complaint.

Mr. Haynes, Local 230 and LIUNA are not properly named defendants in Pro Se Plaintiffs "*Amended Civil Rights Act Complaint.*" Pet 17-18. In addition, they are not properly named Respondents in the instant Petition.

The Petitioners' Petition for a Writ of Mandamus requests this Court to direct the District Court to docket the Third Amended Complaint and to rule in support of that Complaint (Pet 23) even though Defendants Haynes, Local 230, and LIUNA are improperly captioned as defendants and improperly captioned as Respondents in the instant Petition.

CONCLUSION

Petitioners' Writ of Mandamus is without merit. Respondents respectfully request that this Honorable Court deny the Petition.

Respectfully submitted,

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